

### **ARGUMENTS**

#### **1. Rejection of Claims 1-16 under 35 U.S.C. §112**

The Examiner has rejected claims 1-16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Applicants respectfully request reconsideration of these claims based on the present amendment.

The Examiner rejected Claims 1 and 9 stating that the claim recited “a frozen filling contained within a self-rising bread crust . . . (and) it is not clear whether the filling is applied onto the surface of bread crust or whether the filling is applied inside of the bread crust.” Claims 1 and 9 have been amended to more clearly define the invention. More specifically, it provides that the bottom and the sidewalls form a “cavity” within the bread crust and that the filling is contained within the cavity. Applicants respectfully request that this rejection be withdrawn.

The Examiner also rejected Claims 1 and 9 that recite the limitation of “a shipping carton containing the dinner product.” The Examiner noted that it is “not clear how the dinner product can include a shipping carton as a component, while simultaneously, the shipping carton contains the whole dinner product including the shipping carton.” Applicants have amended Claims 1 and 9 to more clearly define the invention. More specifically, the claim is now directed to a kit which includes the dinner product and the shipping carton. Applicants respectfully request that this rejection be withdrawn.

The Examiner rejected Claims 2 and 10 that recite “one or more components . . . consisting of pasta, meat, cheese and vegetables in a sauce and wherein the sauce covers the one or more components.” The Examiner stated that “it is not clear whether the sauce is included on the one or more components.” The intent was to have one or more components “in a sauce.” The phrase “in a sauce” was not intended to be one of the components. The claims have been amended to state this more clearly. Applicants respectfully request that this rejection be withdrawn.

The Examiner rejected Claims 3-4 and 11-12 because of improper antecedent basis for the limitation “the sauce.” The Applicants have amended Claims 3 and 11 to make it clear that the oil coating prevents the filling from soaking

into the crust during cooking. Applicants respectfully submit, however, that this rejection as applied to Claims 4 and 12 is improper since these claims depend on Claims 2 and 10, respectively, which do contain the proper antecedent basis for "the sauce." Applicants respectfully request that this rejection be withdrawn.

The Examiner rejected Claims 7-8 and 15-16 stating that the claim recited "100 lbs flour" or "100 lbs percent flour" and "it is not clear whether 100 lbs is being claimed or 100% which would be in keeping with the Baker's percentage."

Applicants have amended Claims 7 and 15 consistent with the use of Baker's percentages. The Applicants have also made amendments to the specification in a similar manner. Applicants respectfully request that this rejection be withdrawn.

## **2. Rejection of Claims 1-4 and 9-12 under 35 U.S.C. §103(a)**

Claims 1-4 and 9-12 were rejected by the Examiner as being obvious under 35 U.S.C. §103(a) over Woodward et al. (U.S. Patent 6,054,697) in view of Kordic et al. (U.S. Patent 5,789,009), Peleg (U.S. Patent 5,247,149), and Friberg (Professional Pastry Chef).

Applicants respectfully submit that Examiner's rejection of Claims 9-15 is improper. The cited references do not teach or suggest the combination of elements of the claimed invention. The Federal Circuit has stated that it is necessary, in order to support a rejection of claims under §103(a) using a combination of references, that there be a teaching or suggestion in one or more of the cited references to combine the elements of the claimed invention. *In re Dow Chemical Co.*, 5 U.S.P.Q.2d 1529 at 1531-32 (Fed.Cir. 1988); *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 at 933 (Fed.Cir. 1984); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303 at 311 (Fed.Cir. 1983). The mere fact that the prior art can be modified does not make the modification obvious, unless the prior art taught or suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

### **A. The Present Invention**

Makers of food products, especially those in a commercial environment, have sought to reduce required cooking times without the risk of burning or overcooking sensitive portions of food items. (Page 1, lines 21-23). The present invention is

directed to an apparatus for baking a **frozen** dinner product with a self rising crust, filling on the crust, and an integral bread ring resting on top of the filling. (Page 14, lines 8-10). Thus, the present invention addresses the problem of baking products that have an outer portion susceptible to overcooking through a baking apparatus having a bottom, an open top, slanted sidewall, an outer rim at the open top, and a detachable baking shield adapted to attach to the outer rim of the baking apparatus. (Page 2 line 30 to Page 3 line 4). However, the present invention is **not directed** to "pizza type" products. (Page 8 line 29 to Page 9 line 7). The present invention provides a frozen dinner product with the crust and integral bread ring can include various fillings, such as "chicken and potatoes in cheese sauce; chicken and pasta in marinara sauce; chicken and vegetables in Alfredo sauce; lasagna with meat sauce; vegetable lasagna; cheese ravioli with meat sauce; cheese ravioli with marinara sauce; chicken, broccoli and rotini in a cheese sauce; beef stew; Italian sausage with pasta in marinara sauce; vegetables and pasta in cheese sauce; vegetables and pasta in marinara sauce; and the like." (Page 20, Lines 19-30). The invention is also directed to a kit for baking a food product, especially a one-dish frozen dinner product having an integral bread ring, which includes baking utensils packaged for commercial shipment. (Page 1, Lines 16-19).

***B. References cited by the Examiner***

The primary reference Woodward et al. discloses a pizza pan shield system including a pan, bottom shield, top shield, one or more types of ring shield, and/ or a screen. (Column 2, lines 60-63). The reference contemplates the baking system for **fresh** not **frozen** products. Thus, Woodward et al. does not disclose a heating system for a **frozen** dinner product. Additionally, Woodward et al. fails to disclose an integral bread ring resting on top of the filling. Woodward et al. does state that their invention "is not limited to pizza-type products" (Column 4, lines 57-58), but then adds that these other products includes pies, cookies, and pastries. (Column 4, line 59). However, applications such as **frozen dinner products are not taught or suggested** by Woodward et al. None of the applications disclosed by Woodward et al. teach or suggest the present invention of the frozen dinner product of an integral bread ring and array of fillings such as those described above.

Kordic et al. discloses a pizza mold for pizza dough which forms raised ridges in the dough. (Columns 1-2, lines 66-1). Kordic et al. does not disclose an apparatus that address the problem of baking products that have an outer portion susceptible to overcooking. The reference does disclose a bread cavity filled with pizza toppings. (Column 2, lines 25-26) However, Kordic et al. is limited to baking **fresh** not **frozen** products. Further, the reference discloses only pizza applications. Additionally, Kordic et al. fails to disclose a kit for baking a food product which includes baking utensils packaged for commercial shipment.

Peleg discloses combining frozen dough that is topped by sauce to be heated and browned by a microwave. (Column 1, lines 31-33). Thus, Peleg discloses heating frozen foods in a **microwave** as opposed to an **oven** used in the present invention. Also, Peleg fails to disclose an integral bread ring resting on top of the filling. Further, Peleg states that a pizza heated by a conventional oven is generally sold without a cooking pan. (Col. 1, Lines 38-41). Thus, Peleg teaches away from the present invention which discloses cooking frozen dinner's in a baking apparatus having a bottom, an open top, slated sidewall, an outer rim at the open top, and a detachable baking shield adapted to attach to the outer rim of the baking apparatus.

Friberg teaches a recipe for pizza dough with a coating of oil. However, Friberg is limited to baking **fresh** not **frozen** products. Fridberg does not disclose an apparatus that address the problem of baking products that have an outer portion susceptible to overcooking. Further, the reference limits itself only to pizza applications. Additionally, Friberg fails to disclose a kit for baking a food product which includes baking utensils packaged for commercial shipment.

***C. No Suggestion to Combine or Modify the References.***

As stated above, in order to support a rejection of claims under 35 U.S.C. §103(a), using a combination of references, it is not sufficient that the combination of references define the claimed invention. Rather, what is needed is a teaching or suggestion to combine elements to arrive at the invention **found in one or more of the prior art references**. None of the references the Examiner relies on contain any teaching or suggestion to combine the elements to arrive at the claimed invention. Therefore, the reliance on these references to sustain a rejection under §103(a) is improper.

Three of the four references cited by the Examiner (i.e., Woodward et al. Kordic et al., and Friberg) are directed to cooking **fresh** products as opposed to frozen product. None of these references teach or suggest a baking apparatus for frozen dinner products. Moreover, none of the above references teach or suggest a kit for baking a food product, especially a one-dish frozen dinner product having an integral bread ring, which includes baking utensils packaged for commercial shipment. Further, Kordic et al. discloses a bread mold, it does not teach or suggest a baking apparatus. Additionally, neither Woodward et al. or Friberg teach or suggest an integral bread ring.

The Peleg reference teaches heating a frozen pizza using a **microwave** not an **oven** as disclosed in the present invention. Additionally, Peleg teaches away from the present invention because Peleg is directed to a “pizza pie that can be reconstituted in a microwave oven while obtaining results generally associated with a standard convection oven.” (Column 6, lines 63-66). Peleg is not directed to the use of a conventional oven or problems of overcooking in such a conventional oven. Additionally, Peleg neither teaches nor suggests using an integral bread ring.

***D. If References are Properly Combinable, Invention still Non-obvious.***

Even if these references were properly combined, they still would not provide the present invention. The Federal Circuit has held that “the test for obviousness is not whether the features of one reference may be bodily incorporated into another reference. . . rather we look to see whether the combined teachings render the claimed subject matter obvious.” *In re Wood*, 599 F.2d 1032, 202 USPQ 171, 174 (CCPA 1979). None of the references cited by the Examiner when combined render the present invention “as a whole” obvious. Woodward et al. describes a pizza pan shield system for baking fresh products. Kordic et al. describes a pizza mold that can be used to form a bread cavity for pizza toppings. Peleg discloses heating a frozen pizza in a microwave. Friberg describes a recipe for pizza dough. The combined teachings fail to teach or suggest an apparatus for baking a **frozen** dinner product with a self rising crust, filling on top of the crust, and an integral bread ring resting on top of the filling without risk of overcooking the outer edges of the food product. Further the combined teachings fail to teach or suggest a kit for baking a

food product, especially a one-dish frozen dinner product having an integral bread ring, which includes baking utensils packaged for commercial shipment.

One of ordinary skill in the art considering these references would not have modified Peleg's method of heating of a frozen pizza using a microwave to arrive at the present invention of heating frozen dinner products by an oven. If the present invention (with the preferred embodiment of an aluminum cover, Page 9, line 10) was heated using a microwave, the heating of metal in a microwave could cause harm to the microwave oven, food product, and/or the operator. The differences between the heating means used in an oven and the heat means of a microwave make the present invention non-obvious to of ordinary skill in the art.

One skilled in the art would not have modified Woodward et al., Kordic and Friberg to arrive at the present invention because none of the references disclose **frozen** dinner products which can be heated without overcooking the outer portions of the food products. Additionally, the above references fail to disclose a shipping kit, including utensils, packaged for commercial shipment. Further, one skilled in the art would not have modified Woodward et al. or Friberg to include an integral bread ring. Indeed, one of ordinary skill in the art could combine the references in the manner suggested by the Examiner only with the use of hindsight based on the present specification. As the Examiner knows, such hindsight reconstruction is improper. *W.L. Gore & Associates, Inc. v. Garlock*, 220 U.S.P.Q. 303, 313 (Fed. Cir 1983).

### **3. Rejection of Claims 5-6 and 13-14 under 35 U.S.C. §103(a)**

Claims 5-6 and 13-14 were rejected by the Examiner as being obvious under 35 U.S.C. §103(a) over Woodward et al. (U.S. Patent 6,054,697) in view of Kordic et al. (U.S. Patent 5,789,009), Peleg (U.S. Patent 5,247,149), Friberg (Professional Pastry Chef), and Ragland (U.S. Patent 5,845,805).

Applicants respectfully submit that Examiner's rejection of Claims 5-6 and 13-14 is improper. The cited references do not teach or suggest the combination of elements of the claimed invention. The Federal Circuit has stated that it is necessary, in order to support a rejection of claims under §103(a) using a combination of references, that there be a teaching or suggestion in one or more of the cited references to combine the elements of the claimed invention. *In re Dow*

*Chemical Co.*, 5 U.S.P.Q.2d 1529 at 1531-32 (Fed.Cir. 1988); *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 at 933 (Fed.Cir. 1984); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, , 220 U.S.P.Q. 303 at 311 (Fed.Cir. 1983). The mere fact that the prior art can be modified does not make the modification obvious, unless the prior art taught or suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

The primary reference Woodward et al., as well as the secondary references Kordic et al. (U.S. Patent 5,789,009), Peleg (U.S. Patent 5,247,149), Friberg (Professional Pastry Chef), were applied in essentially the same manner as discussed above. The discussion of these references from above is hereby incorporated by reference. The newly cited secondary reference Ragland (U.S. Patent 5,845,805) does not correct the deficiencies of the primary reference and the other secondary references as detailed above.

Ragland discloses a baking pan and pan support system which provides insulation or heat shielding around the perimeter of the baking pan leaving the central portion of the baking pan exposed to full heat. (Column 1, lines 39-43). While Ragland discloses a pizza pan to prevent overcooking of the outer portion of the pizza, Ragland contemplates using "fresh vegetables and fruit toppings." (Column 1, lines 17-18). Thus, Ragland discloses baking **fresh** not **frozen** products. Additionally, Ragland fails to disclose an integral bread ring resting on top of the filling. Further, the reference only describes pizza applications. Ragland also fails to disclose a kit for baking a food product which includes baking utensils packaged for commercial shipment. Therefore Ragland neither teaches or suggest the present invention.

As detailed above, the present invention is not obvious over Woodward et al., Kordic et al., Peleg, and Friberg, because there is no suggestion to combine or modify the references. As also detailed above, even if the references are properly combinable, the invention is still non-obvious. Those arguments from above are fully incorporated herein. The new secondary reference is generally not related to frozen packaged dinner products and cannot correct the deficiencies of the other references.

**2. Rejection of Claims 7-8 and 15-16 under 35 U.S.C. §103(a)**

Claims 7-8 and 15-16 were rejected by the Examiner as being obvious under 35 U.S.C. §103(a) over Woodward et al. (U.S. Patent 6,054,697) in view of Kordic et al. (U.S. Patent 5,789,009), Peleg (U.S. Patent 5,247,149), Friberg (Professional Pastry Chef), and Wada et al. (U.S. Patent 5,595,773).

Applicants respectfully submit that Examiner's rejection of Claims 7-8 and 15-16 is improper. The cited references do not teach or suggest the combination of elements of the claimed invention. The Federal Circuit has stated that it is necessary, in order to support a rejection of claims under §103(a) using a combination of references, that there be a teaching or suggestion in one or more of the cited references to combine the elements of the claimed invention. *In re Dow Chemical Co.*, 5 U.S.P.Q.2d 1529 at 1531-32 (Fed.Cir. 1988); *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 at 933 (Fed.Cir. 1984); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303 at 311 (Fed.Cir. 1983). The mere fact that the prior art can be modified does not make the modification obvious, unless the prior art taught or suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984)

The primary reference Woodward et al., as well as the secondary references Kordic et al. (U.S. Patent 5,789,009), Peleg (U.S. Patent 5,247,149), Friberg (Professional Pastry Chef), were applied in essentially the same manner as discussed above. The discussion of these references from above is hereby incorporated by reference. The newly cited secondary reference Wada et al. (U.S. Patent 5,595,773) does not correct the deficiencies of the primary reference and the other secondary references as detailed above.

Wada et al. discloses a method of preparing frozen baker's dough. Specifically, Wada et al. seeks to solve the problems of "volume reduction of bread, roughness of the surface of the crust thereof and an increase in the wall thickness of foams in the crumb." (Column 2, lines 54-45). Wada et al. fails to disclose an integral bread ring resting on top of a filling. Wada et al. also fails to disclose a baking apparatus having a bottom, an open top, slated sidewall, an outer rim at the open top, and a detachable baking shield adapted to attach to the outer rim of the baking apparatus. Additionally, Wada et al. fails to disclose a kit for baking a food



product which includes baking utensils packaged for commercial shipment.

Therefore, Wada et al. neither teaches or suggest the present invention.

As detailed above, the present invention is not obvious over Woodward et al., Kordic et al., Peleg, and Friberg. There is no suggestion to combine or modify the references. As also detailed above, even if the references are properly combinable, the invention is still non-obvious. Those arguments from above are fully incorporated herein. The new secondary reference is generally related to only to bread dough and cannot correct the deficiencies of the other references.

Applicants respectively request that this rejection be withdrawn.

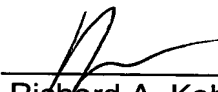
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If the Examiner believes that a telephonic or personal interview would be helpful in the present case, the Examiner is requested to telephone Applicants' attorney at the telephone number set forth herein below.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,  
FITCH, EVEN, TABIN & FLANNERY

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